

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants	David F. Davenport, <i>et al.</i>
Application No. 10/692,063	Filing Date: October 23, 2003
Title of Application:	Method And Composition For Feeding Mammals
Confirmation No. 7269	Art Unit: 1616
Examiner	

Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**AFFIDAVIT UNDER 37 C.F.R. §1.132**

I, Dr. David F. Davenport, hereby declare and state as follows:

1. I am the CEO of MD's Choice, Inc. the assignee of U.S. Patent Application No. 10/693063 entitled "Method and Composition for Feeding Mammals" (the "'063 Application") and a named inventor to the '063 Application.
2. I have been CEO of MD's Choice, Inc. since November 1998.
3. In late summer of 2001 MD's Choice began development of an enteral nutrition program to treat a horse in critical care condition.
4. In order to test whether the enteral nutrition program was effective to treat a horse in critical condition, it was necessary for MD's Choice to provide the enteral nutrition program to veterinarians and veterinary hospitals treating critically ailing

horses. The ability to test the enteral nutrition program depended on the availability of a critically ailing horse.

5. The first test began on or about August 23, 2001, when MD's Choice provided Lytle Creek Farms Inc. with a 4 part enteral nutrition program to treat an 800 kg gelding. Lytle Creek Farms was provided with amounts of the 4 part program believed to be sufficient to treat the gelding.

6. After providing the enteral nutrition program to the gelding, Lytle Creek Farms reported the results of the treatment to MD's Choice. The results of this treatment are discussed in paragraph [0116] of the Application.

7. This testing was recorded on MD's Choice's invoice shown in Exhibit A. These invoices recorded the recipient of the program, in this case Lytle Creek Farms, the amount provided and instructions accompanying the program. Exhibit A shows that that the balance due by Lytle Creek Farms was zero and that Lytle Creek Farms was not charged for receiving the program. Although the distribution of the enteral nutrition program was recorded on an invoice, this invoice does not represent a sale of the enteral nutrition program. This information was recorded on an invoice because MD's Choice used invoices to track the distribution of the treatment program and provide instructions to the recipient of the treatment program.

8. Other than the invoice in Exhibit A and the papers reporting the results of the test, MD's Choice has not retained any additional documentation regarding the formulation of the enteral nutrition program provided to Lytle Creek Farms.

9. On or about October 12, 2001 MD's Choice performed a second test in which MD's Choice provided University of Tennessee, College of Veterinary Medicine (UTCVM) with a 4 part enteral nutrition program to treat a 6 year old, 100 kg, American Miniature Horse. UTCVM was provided with amounts of the 4 part program believed to be sufficient to treat the horse.

10. After providing the enteral nutrition program to the horse, UTCVM reported the results of the treatment to MD's Choice. The results of this treatment are discussed in paragraph [0115] of the Application and Enteral Feeding of a Hyperlipemic Miniature Horse with a Component Feeding Program, Sommardahl et al., Nutrition in Clinical Practice vol. 17(1) Abstract p. 68-9 Feb. 2002.

11. This testing was recorded on MD's Choice's invoice shown in Exhibit B. As with the invoice for Lytle Creek Farms, these invoice recorded the recipient of the program, the amount provided and instructions accompanying the program. Exhibit B shows that that the balance due by UTCVM was zero and that UTCVM was not charged for receiving the program. Although the distribution of the

enteral nutrition program was recorded on an invoice, this invoice does not represent a sale of the enteral nutrition program. This information was recorded on an invoice because MD's Choice used invoices to track the distribution of the treatment program and provide instructions to the recipient of the treatment program.

12. Other than the invoice in Exhibit B and the papers reporting the results of the test, MD's Choice has not retained any additional documentation regarding the formulation of the enteral nutrition program provided to UTCVM.

13. MD's Choice performed similar tests by providing the enteral nutrition program to Nathan M. Slovis, DVM on or about October 29, 2001, to Dr. Ed Letourneau, DVM on or about November 28, 2001, to Akin Equine Vet Services on or about November 30, 2001, and to Heartland Equine Medical Center on or about November 30, 2001 (Exhibit C). As with the tests referenced above, the recipients of the enteral nutrition program received a sufficient amount to treat a single case, were not charged for the enteral nutrition program and reported the results of the test back to MD's Choice.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on my information and belief are believed to be true; further that the statements were made with the knowledge that willful and false statements and the like so made are punishable by fine or imprisonment, or

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Serial No. 10/692,063  
Affidavit

both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of my application or any patent issued thereon.

8/18, 2007  
Date

By: David Davenport, DVM  
Dr. David F. Davenport

## **Exhibit A**

**MD'S CHOICE, INC**

2362 AIRBASE ROAD  
LOUISVILLE, TN 37777  
Telephone (865) 380-0950  
<http://www.mdschoice.com>

**Invoice**

DATE	INVOICE #
8/23/2001	2988

BILL TO	SHIP TO
LYTLE CREEK FARMS, INC. DR. JOHN BENNETT, DVM 6011 MANCHESTER PIKE MURFREESBORO, TN 37127 615-907-9888w 615-907-1323f	JIMMY OR JULIE

P.O. NUMBER	TERMS	DUE DATE	REP	SHIP	VIA	OTB
	When Ordered	8/23/2001	MD	8/23/2001	UPS	

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
20	PART 1 CRITICA...	LIQUID MEAL - ADD TO WARM H <sub>2</sub> O (1 US GALLON... MAX T=100°F, LET INCUBATE @ ROOM TEMPERATURE AT LEAST 1 HOUR, DISCARD UNUSED PORTION AFTER 48 HOURS.	5.25	105.00
1	PART 2 COMPL...	LIQUID VITAMIN - MINERAL TRACE MIN - ANTIOXIDANT - 3oz PER DAY, REFRIGERATE AFTER OPENING	27.50	27.50
10	PART 3 GI SUPP...	GI SUPPORT - 1 SERVING PER DAY, DIVIDED BETWEEN MEALS - SMALL FOALS 1/3 TO 1/2 SERVING PER DAY.	5.84	58.40
40	PART 4 SUSPEN...	SUSPENDABLE FEED - MIX 2# W/ 5 GAL H <sub>2</sub> O, RINSE WITH 5 GAL H <sub>2</sub> O - AGITATE AT FEEDING	2.25	90.00
1	INSTRUCTIONS	INSTRUCTIONS - LI & II CAN BE DOSE ADJUSTED FOR YOUNG FOALS. THE SUSPENDABLE FEED CAN BE USED W/ FOALS PREVIOUSLY ON SOLID FEED/HAY. TOTAL MAINTENANCE CALORIES & 2/3 OF REQUIRED PROTEIN FOR 1000# HORSE... CALL FOR CONSULTATION TO CUSTOMIZE TO SPECIFIC CASE.	0.00	0.00
			<b>Subtotal</b>	
			<b>Sales Tax (0.0%)</b>	
			<b>Total</b>	
			<b>Payments/Credits</b>	
			<b>Balance Due</b>	

Thank you for your order. We hope that you have a Great Day!!

Your order was cheerfully filled by: \_\_\_\_\_

**MD'S CHOICE, INC**

2362 AIRBASE ROAD  
LOUISVILLE, TN 37777  
Telephone (865) 380-0950  
<http://www.mdschoice.com>

**Invoice**

DATE	INVOICE #
8/23/2001	2988

BILL TO	SHIP TO
LYTLE CREEK FARMS, INC. DR. JOHN BENNETT, DVM 6011 MANCHESTER PIKE MURFREESBORO, TN 37127 615-907-9888w 615-907-1323f	JIMMY OR JULIE

P.O. NUMBER	TERMS	DUE DATE	REP	SHIP	VIA	OTB
	When Ordered	8/23/2001	MD	8/23/2001	UPS	

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
2	COMPLETE - AA	COMPLETE FORMULA - LIQUID (AA) 1OZ	0.00	0.00
	FRSHP	SERVING (SRP \$50) (PERSONAL SAMPLE) SHIPPING/HANDLING ( 1/2 HALF S&H OVER \$500 OF MEAL IN ORDER)	35.00	35.00
			<b>Subtotal</b>	<b>\$315.90</b>
			<b>Sales Tax (0.0%)</b>	<b>\$0.00</b>
			<b>Total</b>	<b>\$315.90</b>
			<b>Payments/Credits</b>	<b>\$-315.90</b>
			<b>Balance Due</b>	<b>\$0.00</b>

Thank you for your order. We hope that you have a Great Day!!

Your order was cheerfully filled by: \_\_\_\_\_



## **Exhibit B**

**MD'S CHOICE, INC**

2362 AIRBASE ROAD  
LOUISVILLE, TN 37777  
Telephone (865) 380-0950  
<http://www.mdschoice.com>

**Invoice**

DATE	INVOICE #
10/12/2001	3200

BILL TO	SHIP TO
UTCVM Large Animal Clinical Sciences Attn: HAYDEN 2407 RIVER DRIVE KNOXVILLE, TN 37996-4545	

P.O. NUMBER	TERMS	DUE DATE	REP	SHIP	VIA	OTB
	Due on receipt	10/12/2001	DFD	10/12/2001	DAVE	

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
35	PART 4 SUSPEN...	PART 4 SUSPENDABLE FEED - MIX 2# W/1.5 GAL H2O, RINSE WITH .5 GAL H2O - AGITATE AT FEEDING	0.00	0.00
20	PART 1 CRITICA...	PART 1 CRITICAL CARE MEAL - ADD TO WARM H2O (1 US GALLON... MAX T=100°F, LET INCUBATE @ ROOM TEMPERATURE AT LEAST 1 HOUR, DISCARD UNUSED PORTION AFTER 48 HOURS.	0.00	0.00
1	PART 2 COMPL...	PART 2 LIQUID VITAMIN - MINERAL TRACE MIN - ANTIOXIDANT - 3oz PER DAY, REFRIGERATE AFTER OPENING	0.00	0.00
10	PART 3 GI SUPP...	PART 3 GI SUPPORT - 1 SERVING PER DAY, DIVIDED BETWEEN MEALS - SMALL FOALS 1/3 TO 1/2 SERVING PER DAY.	0.00	0.00
			<b>Subtotal</b>	<b>\$0.00</b>

Thank you for your order. We hope that you have a Great Day!!

Your order was cheerfully filled by: \_\_\_\_\_

<b>Sales Tax (8.25%)</b>	<b>\$0.00</b>
<b>Total</b>	<b>\$0.00</b>
<b>Payments/Credits</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$0.00</b>

## **Exhibit C**

**MD'S CHOICE, INC**

2362 AIRBASE ROAD  
LOUISVILLE, TN 37777  
Telephone (865) 380-0950  
<http://www.mdschoice.com>

**Invoice**

DATE	INVOICE #
10/29/2001	3258

BILL TO	SHIP TO
NATHAN M. SLOVIS, DVM MEDICINE FACILITY 4250 IRON WORKS PIKE LEXINGTON, KY 40511-8412	

P.O. NUMBER	TERMS	DUE DATE	REP	SHIP	VIA	OTB
		10/29/2001	MDP	10/29/2001	SHOW	

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
10	PART 1 CRITICA...	PART 1 CRITICAL CARE MEAL - AID TO WARM H2O (1 US GALLON... MAX T=100°F LET INCUBATE @ ROOM TEMPERATURE AT LEAST 1 HOUR, DISCARD UNUSED PORTION AFTER 48 HOURS.	0.00	0.00
1	PART 2 COMPL...	PART 2 LIQUID VITAMIN - MINERAL TRACE MIN - ANTIOXIDANT - 3oz PER DAY, REFRIGERATE AFTER OPENING	0.00	0.00
10	PART 3 GI SUPP...	PART 3 GI SUPPORT - 1 SERVING PER DAY, DIVIDED BETWEEN MEALS - SMALL FOALS 1/3 TO 1/2 SERVING PER DAY.	0.00	0.00
35	PART 4 SUSPEN...	PART 4 SUSPENDABLE FEED - MIX 2# W/1.5 GAL H2O, RINSE WITH 5 GAL H2O - AGITATE AT FEEDING	0.00	0.00
1	ARTH120	ARTHROSAMINE 120 CAPS - HUMAN (SRP \$39.95)	0.00	0.00
			<b>Subtotal</b>	<b>\$0.00</b>

Thank you for your order. We hope that you have a Great Day!!

Your order was cheerfully filled by: \_\_\_\_\_

<b>Sales Tax (0.0%)</b>	<b>\$0.00</b>
<b>Total</b>	<b>\$0.00</b>
<b>Payments/Credits</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$0.00</b>

**MD'S CHOICE, INC**

2362 AIRBASE ROAD  
LOUISVILLE, TN 37777  
Telephone (865) 380-0950  
<http://www.mdschoice.com>

**Invoice**

DATE	INVOICE #
11/28/2001	3472

BILL TO	SHIP TO
DR. ED LETOURNEAU DVM 23668 AVENUE 17 MADERA, CA 93637 559-673-5500v/f	

P.O. NUMBER	TERMS	DUE DATE	REP	SHIP	VIA	OTB
	When Ordered	11/28/2001	MDP	11/28/2001	UPS	

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
20	PART 1 CRITICA...	PART 1 CRITICAL CARE MEAL - ADD TO WARM H2O (1 US GALLON... MAX T=100°F LET INCUBATE @ ROOM TEMPERATURE AT LEAST 1 HOUR, DISCARD UNUSED PORTION AFTER 48 HOURS.	0.00	0.00
1	PART 2 COMPL...	PART 2 LIQUID VITAMIN - MINERAL TRACE MIN - ANTIOXIDANT - 3oz PER DAY, REFRIGERATE AFTER OPENING	0.00	0.00
10	PART 3 GI SUPP...	THIS ITEM WAS PICKED UP AT AAEP PART 3 GI SUPPORT - 1 SERVING PER DAY, DIVIDED BETWEEN MEALS - SMALL FOALS 1/3 TO 1/2 SERVING PER DAY.	0.00	0.00
35	PART 4 SUSPEN...	PART 4 SUSPENDABLE FEED - MIX 2# W/1.5 GAL H2O, RINSE WITH .5 GAL H2O - AGITATE AT FEEDING	0.00	0.00
			<b>Subtotal</b>	<b>\$0.00</b>
			<b>Sales Tax (0.0%)</b>	<b>\$0.00</b>
			<b>Total</b>	<b>\$0.00</b>
			<b>Payments/Credits</b>	<b>\$0.00</b>
			<b>Balance Due</b>	<b>\$0.00</b>

Thank you for your order. We hope that you have a Great Day!!

Your order was cheerfully filled by: \_\_\_\_\_

**MD'S CHOICE, INC**

2362 AIRBASE ROAD  
LOUISVILLE, TN 37777  
Telephone (865) 380-0950  
<http://www.mdschoice.com>

**Invoice**

DATE	INVOICE #
11/30/2001	3481

BILL TO	SHIP TO
HEARTLAND EQUINE MEDICAL CENTER attn. NANCY BOHNHOFF, DVM 2512 DEANE SOLOMON RD FAYETTEVILLE, AR 72704 501-521-8284f 501-443-0035v	

P.O. NUMBER	TERMS	DUE DATE	REP	SHIP	VIA	OTB
	When Ordered	11/30/2001	MDP	11/30/2001	UPS	

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
20	PART 1 CRITICA...	PART 1 CRITICAL CARE MEAL - ADD TO WARM H2O (1 US GALLON... MAX T=100c, LET INCUBATE @ ROOM TEMPERATURE AT LEAST 1 HOUR, DISCARD UNUSED PORTION AFTER 48 HOURS.	5.25	105.00
1	PART 2 COMPL...	PART 2 LIQUID VITAMIN - MINERAL TRACE MIN - ANTIOXIDANT - 3oz PER DAY, REFRIGERATE AFTER OPENING	27.50	27.50
10	PART 3 GI SUPP...	PART 3 GI SUPPORT - 1 SERVING PER DAY, DIVIDED BETWEEN MEALS - SMALL FOALS 1/3 TO 1/2 SERVING PER DAY.	5.84	58.40
35	PART 4 SUSPEN...	PART 4 SUSPENDABLE FEED - MIX 2# W/1.5 GAL H2O, RINSE WITH .5 GAL H2O - AGITATE AT FEEDING	2.25	78.75
2	ARTHI20	ARTHROSAMINE 120 CAPS - HUMAN (SRP \$39.95)	21.00	42.00

**Subtotal****Sales Tax (0.0%)****Total****Payments/Credits****Balance Due**

Thank you for your order. We hope that you have a Great Day!!

Your order was cheerfully filled by: \_\_\_\_\_

**MD'S CHOICE, INC**

2362 AIRBASE ROAD  
LOUISVILLE, TN 37777  
Telephone (865) 380-0950  
<http://www.mdschoice.com>

**Invoice**

DATE	INVOICE #
11/30/2001	3481

BILL TO	SHIP TO
HEARTLAND EQUINE MEDICAL CENTER ATTN: NANCY BOHNHOFF, DVM 2512 DEANE SOLOMON RD FAYETTEVILLE, AR 72704 501-521-8284f 501-443-0035v	

P.O. NUMBER	TERMS	DUE DATE	REP	SHIP	VIA	OTB
	When Ordered	11/30/2001	MDP	11/30/2001	UPS	
QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT		
	INSTRUCTIONS	INSTRUCTIONS - I, II, & III CAN BE LOOSE ADJUSTED FOR YOUNG FOALS. THE SUSPENDABLE FEED CAN BE USED W/ FOALS PREVIOUSLY ON SOLID FEED/HAY. TOTAL MAINTENANCE CALORIES & 2/3 OF REQUIRED PROTEIN FOR 1000# HORSE... CALL FOR CONSULTATION TO CUSTOMIZE TO SPECIFIC CASE.	0.00	0.00		
	FRSHP	SHIPPING/HANDLING	28.85	28.85		
			Subtotal	\$340.50		

Thank you for your order. We hope that you have a Great Day!!

Your order was cheerfully filled by: \_\_\_\_\_

**MD'S CHOICE, INC**

2362 AIRBASE ROAD  
LOUISVILLE, TN 37777  
Telephone (865) 380-0950  
<http://www.mdschoice.com>

**Invoice**

DATE	INVOICE #
11/30/2001	3483

<b>BILL TO</b>	<b>SHIP TO</b>
AKIN EQUINE VET SERVICES MARK AKIN 6740 CENTER HILL RD OLIVE BRANCH, MS 38654	

P.O. NUMBER	TERMS	DUE DATE	REP	SHIP	VIA	OTB
	When Ordered	11/30/2001	MDP	11/30/2001	UPS	

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
20	PART 1 CRITICA...	PART 1 CRITICAL CARE MEAL - ADD TO WARM H2O (1 US GALLON... MAX T=100c, LET INCUBATE @ ROOM TEMPERATURE AT LEAST 1 HOUR, DISCARD UNUSED PORTION AFTER 48 HOURS.	5.25	105.00
1	PART 2 COMPL...	PART 2 LIQUID VITAMIN - MINERAL TRACE MIN - ANTIOXIDANT - 3oz PER DAY, REFRIGERATE AFTER OPENING	27.50	27.50
10	PART 3 GI SUPP...	PART 3 GI SUPPORT - 1 SERVING PER DAY, DIVIDED BETWEEN MEALS - SMALL FOALS 1/3 TO 1/2 SERVING PER DAY.	5.84	58.40
35	PART 4 SUSPEN...	PART 4 SUSPENDABLE FEED - MIX 2# W/1.5 GAL H2O, RINSE WITH .5 GAL H2O - AGITATE AT FEEDING	2.25	78.75
	DISCOUNT	DISCOUNT	-5.40	-5.40

**Subtotal****Sales Tax (0.0%)****Total****Payments/Credits****Balance Due**

Thank you for your order. We hope that you have a Great Day!!

Your order was cheerfully filled by: \_\_\_\_\_



**MD'S CHOICE, INC**

2362 AIRBASE ROAD  
LOUISVILLE, TN 37777  
Telephone (865) 380-0950  
<http://www.mdschoice.com>

**Invoice**

DATE	INVOICE #
11/30/2001	3483

BILL TO	SHIP TO
AKIN EQUINE VET SERVICES MARK AKIN 6740 CENTER HILL RD OLIVE BRANCH, MS 38654	

P.O. NUMBER	TERMS	DUE DATE	REP	SHIP	VIA	OTB
	When Ordered	11/30/2001	MDP	11/30/2001	UPS	

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
	FRSHP	SHIPPING/HANDLING	50.00	50.00
	INSTRUCTIONS	INSTRUCTIONS - I, II, & III CAN BE DOSE ADJUSTED FOR YOUNG FOALS. THE SUSPENDABLE FEED CAN BE USED W/ FOALS PREVIOUSLY ON SOLID FEED/HAY. TOTAL MAINTENANCE CALORIES & 2/3 OF REQUIRED PROTEIN FOR 1000# HORSE... CALL FOR CONSULTATION TO CUSTOMIZE TO SPECIFIC CASE.	0.00	0.00
			<b>Subtotal</b>	<b>\$314.25</b>

Thank you for your order. We hope that you have a Great Day!!

Your order was cheerfully filled by: \_\_\_\_\_

**Sales Tax (0.0%)** \$0.00

**Total** **\$314.25**

**Payments/Credits** \$-314.25

**Balance Due** **\$0.00**